

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-filed: 2/20/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HYNIX SEMICONDUCTOR INC., HYNIX
SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR U.K. LTD., and
HYNIX SEMICONDUCTOR
DEUTSCHLAND GmbH,

Plaintiffs,

v.

RAMBUS INC.,

Defendant.

No. CV-00-20905 RMW

ORDER REGARDING TESTIMONY OF
BRIAN SHIRLEY

[Re Docket No. 3248]

1	RAMBUS INC.,	No. C-05-00334 RMW
2	Plaintiff,	[Re Docket No 1287]
3	v.	
4	HYNIX SEMICONDUCTOR INC., HYNIX	
5	SEMICONDUCTOR AMERICA INC.,	
6	HYNIX SEMICONDUCTOR	
7	MANUFACTURING AMERICA INC.,	
8	SAMSUNG ELECTRONICS CO., LTD.,	
9	SAMSUNG ELECTRONICS AMERICA,	
10	INC., SAMSUNG SEMICONDUCTOR, INC.,	
11	SAMSUNG AUSTIN SEMICONDUCTOR,	
12	L.P.,	
13	NANYA TECHNOLOGY CORPORATION,	
14	NANYA TECHNOLOGY CORPORATION	
15	U.S.A.,	
16	Defendants.	
17	RAMBUS INC.,	No. C-06-00244 RMW
18	Plaintiff,	[Re Docket No. 896]
19	v.	
20	MICRON TECHNOLOGY, INC., and	
21	MICRON SEMICONDUCTOR PRODUCTS,	
22	INC.	
23	Defendants.	

20 Rambus seeks to preclude Brian Shirley, a Micron representative, from testifying on two
21 subjects: (1) "industry lock-in"; and (2) a quantification of the alleged switching costs Micron would
22 incur were it to design around Rambus's alleged "feature set." Micron does not intend to have Mr.
23 Shirley testify as to "industry lock-in" or to switching costs as of today. Therefore, the only
24 outstanding dispute is whether Mr. Shirley can testify to his numerical estimate of Micron's
25 switching costs in 2000. The court has read the parties' briefs and heard their oral argument, and for
26 the following reasons, partially grants Rambus's motion.

27 Micron designated Mr. Shirley its 30(b)(6) witness regarding its contention that it was
28

1 locked-in to DDR, DDR2, DDR3 and DDR4 standards or any standards subsequent thereto. In his
2 30(b)(6) deposition, Mr. Shirley's testimony was very general: "I don't remember the exact dollar
3 figure. I remember that it was in the multiple hundreds of millions of dollars at minimum and from
4 our analysis was prohibitive enough that we came to the conclusion that we were locked into this
5 feature set." Hamilton Decl., Ex. G at 134:14-19. The dollar figure estimate that was based upon
6 the collective input of a group of Micron employees provided at a single meeting "sometime in the
7 early 2000s" that probably occurred in Idaho. Hamilton Decl., Ex. F at 131:3-11.

8 Micron advances two evidentiary bases for Mr. Shirley's quantification of Micron's estimated
9 switching costs. First, Micron argues that Mr. Shirley's estimate is permissible as a lay opinion.
10 The court disagrees. There is an inadequate foundation for the "hundreds of millions" figure, even
11 as a lay opinion. While serving as Micron's representative, Mr. Shirley could not testify to any
12 analytical details and conceded that the "analysis" was the result of a group discussion. The
13 situation here is unlike that in cases where the court has allowed lay opinions based upon a witness'
14 own experience and percipient knowledge of their business. *See, e.g., United States v. Muñoz-*
15 *Francisco*, 487 F.3d 25 (1st Cir. 2007) (lay opinion testimony allowed under FRE 701 where based on
16 knowledge of a bank's banking practices that the witness acquired during his employment at the
17 bank). Here, Mr. Shirley's estimate is not based upon his own knowledge and experience with
18 Micron's business, but rather on the collective effort of a single group discussion at an
19 undocumented meeting. This cannot satisfy Rule 701(a)'s requirement that a lay opinion be
20 "rationally based on the perception of the witness."¹

21 Even if Mr. Shirley's dollar estimate lacks any foundation or reasonable basis such that it
22 cannot be considered for its truth, he could recount the figure to explain Micron's state of mind in
23 the early 2000s when it allegedly chose not to try to switch away from using Rambus's technologies.
24 While this use of his proffered testimony has some probative value, its relative probative value is
25

26 ¹ On the other hand, Mr. Shirley's deposition testimony demonstrates that he has the
27 personal knowledge and familiarity with Micron's business to discuss what factors affect the cost of
28 switching technologies, *see* Hamilton Decl., Ex. F at 131:23-133:7, and testimony regarding such cost
categories involved in switching designs appears to be properly within his percipient knowledge.

1 minimal in light of Mr. Shirley's more grounded testimony regarding the types of costs involved in
2 switching technologies. In this context, the baseless "hundreds of millions of dollars" figure
3 becomes substantially more prejudicial than probative because of its potential for misleading the
4 jury. Accordingly, this use of the dollar figure evidence is improper under Rule 403.

5 The court will therefore allow Mr. Shirley to testify about the different types of work and
6 expenses that go into changing features in a memory product along the lines of his deposition
7 testimony, *see* Hamilton Decl., Ex. F at 131:23-133:7. He can also testify that the group who
8 discussed the matter concluded that these costs involved with switching away from using Rambus's
9 technologies would have been prohibitive. This testimony can be offered to show Micron's state of
10 mind and why it did not undertake a switch. However, he cannot give an estimate of the dollar
11 amount of switching costs as there is no adequate foundation for Mr. Shirley's lay opinion of the
12 figure and any reference to the figure in explaining Micron's state of mind is substantially more
13 prejudicial than probative.

14
15 DATED: 2/20/08



RONALD M. WHYTE
United States District Judge

17
18
19
20
21
22
23
24
25
26
27
28

Notice of this document has been electronically sent to:

Counsel for Rambus Inc., all actions		Counsel for Hynix entities, C-00-20905 and C-05-00334	
Burton Alexander Gross	Burton.Gross@mto.com	Allen Ruby	ruby@allenrubylaw.com
Carolyn Hoecker Luedtke	carolyn.luedtke@mto.com	Belinda Martinez Vega	bvega@omm.com
Catherine Rajwani	crajwani@sidley.com	Daniel J. Furniss	djfurniss@townsend.com
Craig N. Tolliver	ctolliver@mckoolsmith.com	Geoffrey Hurndall Yost	gyost@thelenreid.com
David C. Yang	david.yang@mto.com	Jordan Trent Jones	jtjones@townsend.com
Douglas A. Cawley	dcawley@mckoolsmith.com	Joseph A. Greco	jagreco@townsend.com
Erin C. Dougherty	erin.dougherty@mto.com	Kenneth Lee Nissly	kennissly@thelenreid.com
Gregory P. Stone	gregory.stone@mto.com	Kenneth Ryan O'Rourke	korourke@omm.com
Jennifer Lynn Polse	jen.polse@mto.com	Patrick Lynch	plynch@omm.com
Keith Rhoderic Dhu Hamilton, II	keith.hamilton@mto.com	Susan Gregory VanKeulen	svankeulen@thelenreid.com
Kelly Max Klaus	kelly.klaus@mto.com	Theodore G. Brown, III	tgbrown@townsend.com
Miriam Kim	Miriam.Kim@mto.com	Tomomi Katherine Harkey	tharkey@thelen.com
Peter A. Detre	detrepa@mto.com	Counsel for Micron entities, C-06-00244	
Pierre J. Hubert	phubert@mckoolsmith.com	Aaron Bennett Craig	aaroncraig@quinnmanuel.com
Rosemarie Theresa Ring	rose.ring@mto.com	David J. Ruderman	davidruderman@quinnmanuel.com
Scott L Cole	scole@mckoolsmith.com	Harold Avrum Barza	halbarza@quinnmanuel.com
Scott W. Hejny	shejny@sidley.com	Jared Bobrow	jared.bobrow@weil.com
Sean Eskovitz	sean.eskovitz@mto.com	John D Beynon	john.beynon@weil.com
Steven McCall Perry	steven.perry@mto.com	Leeron Kalay	leeron.kalay@weil.com
Thomas N Tarnay	ttarnay@sidley.com	Linda Jane Brewer	lindabrewer@quinnmanuel.com
William Hans Baumgartner, Jr	wbaumgartner@sidley.com	Rachael Lynn Ballard McCracken	rachaelmccracken@quinnmanuel.com
		Robert Jason Becher	robertbecher@quinnmanuel.com
		Yonaton M Rosenzweig	yonirosenzweig@quinnmanuel.com

Counsel for Nanya entities, C-05-00334		Counsel for Samsung entities, C-05-00334 and C-05-02298	
Chester Wren-Ming Day	cday@orrick.com	Ana Elena Kadala	anita.kadala@weil.com
Craig R. Kaufman	ckaufman@orrick.com	Claire Elise Goldstein	claire.goldstein@weil.com
Glenn Michael Levy	glevy@orrick.com	David J. Healey	david.healey@weil.com
Jan Ellen Ellard	jellard@orrick.com	Edward Robert Reines	Edward.Reines@weil.com
Jason Sheffield Angell	jangell@orrick.com	Matthew D. Powers	matthew.powers@weil.com
Kaiwen Tseng	ktseng@orrick.com		
Mark Shean	mshean@orrick.com		
Robert E. Freitas	rfreitas@orrick.com		
Vickie L. Feeman	vfeeman@orrick.com		

Counsel for intervenor, Texas Instruments, Inc., C-05-00334	
Kelli A. Crouch	kcrouch@jonesday.com
Counsel for intervenor, United States Department of Justice, C-00-20905	
Eugene S. Litvinoff	eugene.litvinoff@usdoj.gov
May Lee Heye	may.heye@usdoj.gov
Nathanael M. Cousins	nat.cousins@usdoj.gov
Niall Edmund Lynch	Niall.Lynch@USDOJ.GOV
Counsel for intervenor, Elpida Memory, Inc., C-00-20905 and C-05-00334	
Eric R. Lamison	elamison@kirkland.com
John J. Feldhaus	jfeldhaus@foley.com

Counsel are responsible for distributing copies of this document to co-counsel that have not registered for e-filing under the court's CM/ECF program in each action.

Dated: 2/20/08

TSF
Chambers of Judge Whyte